

Applicants: Wyatt Paul et al.
Serial No: 09/377,502
Filed: August 20, 1999
Page 11

REMARKS

Claims 1-4, 7-11, 14-18, 21-25, 28-40, 42, 43 and 45-51 are pending in this application. By this Amendment, applicants have amended claims 31, 37, 39, 46 and 48. Accordingly, claims 1-4, 7-11, 14-18, 21-25, 28-40, 42, 43 and 45-51 are currently under examination in the subject application.

Of these, the Examiner has indicated that claims 1-4, 7-11, 14-18, 21-25, 28-30, 32-36, 38, 40, 42-43, 45 and 50-51 are allowed. With the amendment of claims 31, 37, 39, 46 and 48, applicants respectfully submit that all of the pending claims are in condition for allowance.

Rejection under 35 U.S.C. § 102

On page 2 of the September 9, 2003 Office Action, the Examiner rejected claims 31, 37, 39 and 46-49 (newly amended in their dependency upon newly amended independent claims) under 35 U.S.C. § 102(e) as allegedly anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gutterson et al. (U.S. 6,392,119, effectively filed 24 January 1997) for reasons as stated in the last Office Action.

The Examiner alleged that the claims are directed to seeds or progeny plants derived from parent plants which have been produced by crossing two grandparent plants, each grandparent comprising a transgene encoding a portion of an enzyme, wherein the single portion encoded by only one of the transgenes is inactive, wherein one of the genes encoding one of the portions is ligated to a tissue-specific promoter, and wherein one of the portions is linked to a targeting peptide sequence. However, the Examiner alleged that the claimed

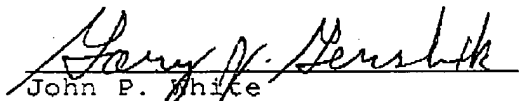
Applicants: Wyatt Paul et al.
Serial No: 09/377,502
Filed: August 20, 1999
Page 12

seeds or progeny plants do not comprise both transgenes; they only comprise at lease one of the two transgenes. See, e.g., claim 31, which recites "at least one of ...gene sequences encoding polypeptides A or B" [emphasis added]. Thus, the Examiner alleged that the claims read on seeds or progeny comprising a transgene which does not comprise a targeting peptide-encoding sequence, given Mendelian segregation of genes following meiosis.

In response, to advance prosecution of the subject application without conceding the correctness of the Examiners' rejection, applicants have amended the claims of the subject application such that all of the pending claims now recite that one or both of the polypeptides A or B (A* or B*) is fused to a carrier protein or a protein targeting signal, which the Examiner has acknowledged are free of prior art. Accordingly, all of applicants' claims as amended are in condition for allowance.

No fee is deemed necessary in connection with the filing of this Amendment. However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,


John P. White
Registration No. 28,678
Gary J. Gershik
Registration No. 39,992
Attorneys for Applicants
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400